



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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May 12, 1987

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No. 87/44

TO COUNTY ASSESSORS, COUNTY
COUNSELS, ASSESSMENT APPEALS
BOARDS, AND OTHER INTERESTED PARTIES:

**PROPERTY TAX RULE 463.5,
DATE OF COMPLETION OF NEW CONSTRUCTION**

On November 19, 1986, the State Board of Equalization adopted Property Tax Rule 463.5, Date of Completion of New Construction, following the public hearing on that date.

The staff proposed changes to rule 463.5 to respond to questions raised by the Office of Administrative Law following their review of the rule.

The revisions to rule 463.5 amend subdivisions (b), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(7). These changes are primarily designed to clarify the language of the rule to better express its original intent. They correct paragraph designations, add complete terminology, or restate terms. The amendment of (c)(3) also adds language which will make the rule more complete.

Here is rule 463.5 with the changes shown in brackets.

The changed version of the rule is being placed in the rulemaking file and mailed today to interested parties that commented orally or in writing or that asked to be informed of such amendments. If you wish to review the rulemaking file, it is available for your inspection in Room 450, at this address. Comments received by May 28, 1987, will be before the Board when the Board considers adoption of the changed version on that date. Please mail comments to this address to the attention of Janice Masterton, Regulations Coordinator.

Sincerely,

Douglas D. Bell

Douglas D. Bell
Executive Secretary

DDB:md
0011R/36

RULE 463.5

DATE OF COMPLETION OF NEW CONSTRUCTION - SUPPLEMENTAL ASSESSMENTS

(a) APPLICATION. The provisions of this section are applicable only to supplemental assessments levied pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(b) DATE OF COMPLETION OF NEW CONSTRUCTION. The date of completion of [new construction resulting from] actual physical new construction on the site shall be the earliest of either the date upon which the new construction is available for use by the owner or, if all of the conditions of paragraph [(b)] (1) are satisfied, the date the property is occupied or used by the owner, or with the owner's consent, after the owner has provided a notice in accordance with paragraph [(b)] (1).

(1) The date of completion of new construction [resulting from actual physical new construction] shall not be the date upon which it is available for use if the owner does not intend to occupy or use the property and the owner notifies the assessor in writing prior to, or within 30 days after, the date of commencement of construction that he/she/it does not intend to occupy or use the identified property or a specified portion thereof.

(2) The date of completion of new construction [resulting from actual physical new construction] shall be conclusively presumed to be the date upon which the new construction is available for use by the owner if the assessor fails to receive notice as provided in paragraph [(b)] (1).

(c) DEFINITIONS.

(1) "Property" means land, improvement(s)[,] [including] fixtures[,]
[as defined in Section 463] and mobilehome(s) subject to taxation under Part 13

(commencing with Section 5800) of Division 1 of the Revenue and Taxation Code.

(2) "New Construction resulting from actual physical new construction" means "new construction" as defined in Section 463[, subsections (b) and (f)].

"New construction resulting from actual physical new construction" also includes: (A) the installation of a new fixture which is an addition or is a replacement of an existing fixture; (B) the rehabilitation, renovation or modernization of any fixture which converts it to the substantial equivalent of a new fixture; (C) the severance of [~~structures//fixtures/or/other~~] improvements[, including structures and fixtures,] which is associated with new construction; (D) the severance on, or after, March 1, 1985, of fixtures [which qualify for assessment pursuant to Sections 75.15 and 75.16 of the Revenue and Taxation Code], whether or not the severance is associated with other new construction; or (E) the severance on, or after, July 31, 1985, of structures, whether or not the severance is associated with other new construction.

"New construction resulting from actual physical new construction" does not include: (A) the severance prior to March 1, 1985, of [~~structures/ fixtures//or/other~~] improvements[, including structures and fixtures,] which is not associated with other new construction; (B) the severance on, or after, March 1, 1985 of any improvements, other than structures or fixtures[,] which is not associated with other new construction; (C) the severance prior to July 31, 1985, of structures which is not associated with other new construction; or (D) the discontinued use of [~~structures//fixtures/or/other~~] improvements

[, including structures and fixtures,] which are not physically severed from the [y#17] property but which are made redundant by newly installed or erected structures, fixtures, or other improvements.

Examples: (A) The installation of a multi-level printing press (a fixture) as an addition to existing facilities constitutes actual physical new construction.

(B) The installation of a printing press as the replacement of an existing press is also actual physical new construction.

(C) The complete renovation of an existing press to the substantial equivalent of a new press constitutes actual physical new construction.

(D) The severance of the old press (also a fixture) is actual physical new construction if it is associated with the installation of the new press or other new construction, or if it occurred on or after March 1, 1985.

(3) "Commencement of construction" means the performance of physical activities on the property which results in changes which are visible to any person inspecting the site and are recognizable as the initial steps for the preparation of land or the installation of improvements or fixtures. Such activities include clearing and grading land, layout of foundations, excavation of foundation footing, fencing the site, or installation of temporary structures. Such activities also include the severance of existing improvements or fixtures.

"Commencement of construction" does not include activities preparatory to actual construction such as obtaining architect services, preparing plans and specifications, obtaining building permits or zoning variances or filing subdivision maps or environmental impact reports.

"Commencement of construction" shall be determined solely on the basis of activities which occur and are apparent on the property undergoing new construction. Where several parcels are adjacent and will be ~~created~~ [used] as a single ~~parcel/for/purposes/of~~ [unit by the builder for] the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit. Where a property has been subdivided into separate lots, ~~however~~ [the commencement of construction shall be determined on the basis of the activities occurring on each separate lot. [Where the property has been subdivided into separate lots and several or all of those lots will be used as a single unit by the builder for the construction project, the commencement of construction shall be determined on the basis of the activities which occur on any part of the several parcels comprising the unit.]

(4) "Available for use" means that the property, or a portion thereof, has been inspected and approved for occupancy by the appropriate governmental official or, in the absence of such inspection and approval procedures, when the prime contractor has fulfilled all of the contractual obligations. When inspection and approval procedures are non-existent or exist but are not utilized and a prime contractor is not involved, the newly constructed property is available for use when outward appearances clearly indicate it is immediately usable for the purpose intended. Fixtures are available for use when all testing necessary for proper operation or safety is completed.

New construction is not available for use if, on the date it is otherwise available for use, it cannot be functionally used or occupied. In that case, the property is not available for use until the date that any legal or physical impediment to functional use or occupancy is removed.

If a structure is constructed with the expectation that the tenant(s) will have improvements added after a lease(s) is executed, "available for use" means that point in time when the structure is ready to receive tenant improvements, whether or not there are any tenants at that time and regardless of who is to construct the improvements. [If a construction project is completed in stages with some portions available for occupancy prior to completion of the total project,] [a]ny portion of [~~a/multistage/construction~~] [the] project ready to receive tenant improvements is available for use even though other portions of the project are not ready for such improvements. In the case of physical alterations to land, such as leveling, "available for use" means that point in time when the land is ready for use by the owner and no further new construction is required for the new use. In the case of fixtures added as part of a larger new construction project, "available for use" means that point in time when the project, including the fixture, is ready for use.

(5) "Occupied or used" means the physical occupancy of the property by the owner or any physical use of the property by the owner, except where such occupancy or use is incidental to an offer for a change of ownership. "Occupied or used" also includes the rental or lease of the property or any occupancy or use of the property by third persons with the owner's consent. The occupancy or use of the property occurs on the earliest date when the property is physically occupied [or used,] or when the agreed upon term of occupancy commences. "Used" does not include the transfer of legal title to the property as security.

(6) "Functionally used or occupied" means that the property is or can be used or occupied for the purpose for which it was constructed. The purpose for which the property was constructed or improved shall be determined

on the basis of the type of property and any special facts or circumstances which affect its use or occupancy. Property shall not be considered "functionally used or occupied" if any legal restriction or physical impediment beyond the owners' control prevents the use of the property for the purpose intended.

Examples: (A) A building intended for use as a warehouse can be functionally used when physical construction is completed even though the property to be stored has not arrived at the site.

(B) Land improved by leveling and the installation of an irrigation system which converts it from grazing land to farm land can be functionally used when the improvement activity is completed even though the planting season will not commence for several months.

(C) An office or hotel building on which construction is completed cannot be functionally used if it is uninhabitable because of the lack of power, water or sewer service, or if a natural disaster, such as a flood or earth slide, prevents reasonable public access to the facility.

(7) "Owner's consent" means the express or implied agreement of an owner to allow the property, or a portion thereof, to be physically occupied or used by a third person. Where the use or occupancy is [visible to, or ascertainable by, the assessor] ~~[obvious]~~, it shall be rebuttably presumed that the property is occupied or used with the owner's consent. If the owner has received actual or constructive notice of the occupancy or use, failure of the owner to [communicate an objection to the user] ~~[object]~~ or enforce his rights to remove the occupant within a reasonable time shall be evidence of consent.

(8) "Incidental to an offer for a change of ownership" means that an activity is usual or necessary to the holding of property for sale in the regular course of business. It includes any use or occupancy arising from the demonstration or display of the property for the purpose of selling that property or other property in the vicinity under the same ownership. It includes use of the property by the owner or by any person using the property with the owner's consent. Use of property as a model home, a sales office, or as a temporary storage facility for building materials or furnishings intended to be installed in other property to be held for sale, shall be considered to be incidental to an offer for a change in ownership. Temporary use of the property as lodging by a potential buyer for the purpose of sales promotion shall be considered incidental to an offer for a change of ownership. The use of this property, however, by a potential buyer as a principal residence pending the arrangement or approval of the financing necessary to complete the purchase is not incidental to an offer for a change in ownership.

(9) "Structures" means all improvements subject to supplemental assessment other than living improvements (trees and vines) and fixtures which qualify for assessment pursuant to Sections 75.15 and 75.16 of the Revenue and Taxation Code.

Authority: Section 15606
 Government Code

Reference: Sections 75.10, 75.11, 75.12
 Revenue and Taxation Code